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In the Supreme Court of the United States

OCTOBER TERM, 1991

OCEAN DRILLING & EXPLORATION COMPANY (ODECO),

Petitioner

VERSUS

DIMENSIONAL OILFIELD SERVICES, INC.,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Petitioner respectfully files this Reply Brief to address certain contentions raised in the Brief in Opposition filed by Respondent.

STATEMENT OF THE CASE

Petitioner adopts the Statement of The Case from its Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Dimensional, pursuant to the terms of the contract/work order with ODECO, specifically provided services directly furthering the mission of the special-purpose vessel, OCEAN CONQUEST.

REPLY ARGUMENT

Petitioner, ODECO, respectfully submits this Reply Brief to address the erroneous contentions made by Respondent, Dimensional, in Opposition to the Petition for Writ of Certiorari.

Respondent states in opposition that the services, i.e. wireline services, performed by Dimensional onboard the OCEAN CONQUEST, were non-maritime because wireline services are "peculiar to the oil and gas industry and are therefore non-maritime in nature." Respondent cites *Thurmond v. Delta Well Surveyors*[1] and *Herb's Welding, Inc. v. Gray*[2] for that proposition. However, both *Thurmond, supra* and *Herb's Welding, supra*, are inapplicable to our situation and therefore, easily distinguishable.

Thurmond, supra, is factually distinguishable from the ODECO/Dimensional situation, yet is consistent with the myriad of case law cited in ODECO's Petition for Writ of Certiorari. *Thurmond, supra* held that the

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[1] 836 F.2d 952 (5th Cir. 1988); rehearing *en banc* denied 844 F.2d 788 (5th Cir. 1988).

[2] 470 U.S. 414, 105 S. Ct. 1421, 84 L.Ed 2d 406 (1985).

particular wireline service in that litigation was not maritime **because it did not concern the operation of a vessel.** *Thurmond, supra,* is very fact specific, and its holding should be limited to wireline services which do not concern the operation of a vessel. As noted in *Thurmond, supra* at 954, 955:

> ". . . Thurmond was not engaged in the performance of a maritime obligation, such as one relating to the navigation or operation of the barge KATHY. Indeed, when he was injured, Thurmond was standing on a small protective wooden jacket on the wellhead, a *fixed platform,* and he was opening the well valve. The wellhead was an island, a small one but an island." (emphasis added).

> "The wireline service contract between P&S and Gulf Oil did not address in any way the use of a ship."

Finally, the key factor which distinguishes *Thurmond, supra,* yet makes it consistent with all other previous case law is the following:

> "The principal obligation under this contract was to perform wireline services, *clearly a non-maritime obligation in the sense that it does not concern the operation of a vessel*". *Id.* (emphasis added).

Where wireline services or any specialty service furthers the vessel's mission and function, a maritime obligation arises under such a contract. This is specifically noted in *Thurmond, supra,* and consistently held a key factor in all cases holding that maritime obligations arise when there is a relationship between the contract and a vessel. *Thurmond, supra,* is distinguishable because the contract

and work pertained to fixed platforms, not vessels. In the instant case, however, the ODECO/Dimensional contract/work order addressed work to be performed for the OCEAN CONQUEST [*See* Appendix "E" of ODECO's Petition for Writ of Certiorari], and the work performed directly furthered the mission of the OCEAN CONQUEST.

Dimensional further cites *Herb's Welding, supra* for the proposition that offshore oil and gas exploration and development is inherently non-maritime. This interpretation is incorrect. The Supreme Court did not hold therein that oil and gas production from a **vessel** can no longer be termed maritime commerce, but held instead that not every worker performing a task in oil and gas production from **fixed platforms** is engaged in maritime employment under the 1972 amendments to the LHWCA.

The Court's holding in *Herb's Welding, supra*, that a welder on a fixed platform in Louisiana waters was not engaged in maritime employment, is clearly predicated upon the fact that the welder was working on a fixed platform, and not a vessel. As the Court observed, fixed platforms are not "even suggestive of traditional maritime affairs." *Id.* 105 S. Ct. at 1426. The Court did note, however, that "had the welder been on a **vessel**, he would have enjoyed coverage under the LHWCA," i.e., he would have been performing maritime activity. *Herb's Welding*, 105 S. Ct. 1424, note 2.

CONCLUSION

The Dimensional work, under the terms of its contract/work order with ODECO, specifically furthered the mission of the OCEAN CONQUEST. Under the terms of that contract/work order, Dimensional was certainly "doing the ship's work" as pronounced in *McDermott International, Inc. v. Wilander*[3], and most recently, *Southwest Marine, Inc. v. Gizoni.*[4]

The OCEAN CONQUEST is a special-purpose vessel, whose mission is to assist in oil and gas development. Contracts relating to work and services to such vessels give rise to maritime obligations. A close examination of the cases cited by Respondent, Dimentional, actually support ODECO's argument, and require the alication of maritime law to the contract/work order in question.

Respectfully submitted,

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[3] *McDermott International Inc. v. Wilander* ___ U.S. ___, 111 S. Ct. 807, 112 L.Ed. 2d 866, 1991 AMC 913 (1991).

[4] *Southwest Marine Inc. v. Byron Gizoni* ___ U.S. ___, 1991 WL 252870 (December 4, 1991).

PROOF OF SERVICE

I, Timothy P. Hurley, attorney for the defendant-petitioner, and a member of the bar of the Supreme Court of the United States, hereby certify that on this day I have served copies of the foregoing petition for writ of certiorari on:

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